



UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of Richard H. Davidson, et al

Serial No.: 10/600,459³

Filed: June 23, 2003

Title: FLAVOR ORDERING SYSTEM

Group Art Unit: 3625

Examiner: Mila Airapetian

**Response to Office Action
dated June 2, 2005 and Petition
to Extend the Time To Answer
Pursuant to R. 1.136**

Mail Stop Non-Fee Amendment
Commissioner for Patents and Trademarks
Mail Stop 1450
Alexandria, Virginia 22313-1450

Dear Sir:

INTRODUCTION

In response to the outstanding Office Action of June 2, 2006, we submit herewith Certifications of Richard H. Davidson and Craig D. Hagelin, two of the inventors in support of our request to remove the Birnbaum reference cited in rejecting the remaining pending claims.

10/13/2006 RMEBRAHT 00000035 10600459³
01 FC:2252 225.00 OP

PETITION TO EXTEND

We incorporate herein a Petition for Extension of Time to respond to November 2, 2006, pursuant to R. 1.136, and enclose a check payable to your order in the amount of \$225.00 to cover the extension fees.

LEGAL ARGUMENT

Claims 1, 6 and 11-13 are pending in the Application and have been rejected by the Examiner under 35 U.S.C. 103(a) as being unpatentable over Boyden, et al in view of Birnbaum, et al.

As noted by the Examiner, Boyden "does not teach means for selecting flavor legal status chosen from the group consisting of artificial, natural and artificial, natural flavor, natural type and natural WONF".

The Examiner also notes that "Boyden does not [that (*sic*)] teach that said system includes a flavor search system which is associated with the central processing hub, said flavor search system including means for providing a search results list of available flavors for filling the flavor descriptor requirements and the flavor definition requirements".

The Examiner newly cites Birnbaum, which the Examiner alleges teaches a searchable database associated with the server, wherein a user can specify search terms for food and ingredients in order to find a desired recipe.

The effective filing date of the Birnbaum reference is January 12, 2003. Based upon the Certifications of Richard H. Davidson and Craig D. Hagelin, it is established that the applicant conceived of its invention well before the effective date of the Birnbaum reference. The Certification shows due diligence by the inventors from prior to said date to a subsequent reduction to practice and filing of the Application. Accordingly, under R. 131, the Examiner is respectfully requested to withdraw Birnbaum as a reference.

Accordingly, by the Examiner's own perceptions and arguments, Boyden cannot stand by itself as a base reference to deny any of the pending claims and therefore withdrawal of the rejection and allowance of all of the pending claims is herewith respectfully requested.

Richard H. Davidson, a co-inventor, sets forth in his Certification a conception date of on or about March 24, 2000, at which time he attended a meeting at Hagelin & Company, of the entire flavor division, for the purpose of discussing this new concept. At that meeting the concept of integrating an accessible flavors database on computer for the purpose of searching the database for available flavors was discussed and considered. Thereafter in November or December of 2000, Craig Hagelin and Richard Davidson had numerous discussions regarding use of descriptors, as well as flavor "legal status" keywords. The grouping set forth in Claim 1 of the application was also discussed. On or about June 16, 2000, Davidson spoke to D.C. Helms, regarding web hosting and website development in connection with the Flavor Ordering System. On or about September 15, 2000, there was another group meeting at Hagelin & Company regarding a basic flavors tutorial and status update regarding the website and computer program development for the Flavor Ordering System. Between September 15, 2000 and September 21, 2001, the co-inventors continued to develop the database of flavors. Ultimately a contract was entered into on or about November 9, 2002, with D.C. Helms for website hosting, website development and development of the computer program for the Flavor Ordering System. In approximately February, 2002, the inventors performed a "beta" test in which a selected group of people were utilized as subjects and asked to evaluate the Flavor Order System. Based upon the "beta" test, the ultimate system was developed, and in June, 2002, the firm of Herten, Burstein, et al, was hired to evaluate the invention and to begin drafting an application for filing in the United States Patent and Trademark Office. A final form Application was filed in July, 2003. At this point in time the Flavor Ordering System is fully commercial and integrated into the Hagelin & Company operation.

It is respectfully asserted that the facts set forth in the Davidson Certification, as confirmed by the Hagelin Certification, are in character and weight sufficient to establish a conception date well prior to the effective date of the Birnbaum reference and coupled with due diligence from prior to said date to a subsequent filing of the Application and reduction of the system to practice, satisfies the evidential showing required under R. 131, and again we respectfully request withdrawal of the Birnbaum reference.

Notwithstanding the R. 131 showing, Birnbaum is a "recipe builder" and teaches an interactive system wherein the user builds its own product. It is nothing more than a cooking system and clearly does not establish the flavor searching system of the subject invention. Since the Birnbaum teachings are

inapposite to the subject invention, it would not be obvious by one of ordinary skill in the art to apply the teachings of Birnbaum to the Boyden reference disclosures. As our pending claims set forth, the subject invention is a database of existing flavors which are evaluated and selected by a customer using the computer database of the subject invention. It is a search system.

As previously argued in our response to the January 4, 2006 Office Action, Boyden merely discloses a system for ordering flavors and/or fragrances. Boyden does not offer a search system as claimed, but appears to merely provide a system whereby consumers may input flavor criteria for subsequent made-to-order manufacturing. As pointed out, the present system may be thought of as providing a parametric search, while Boyden is a made-to-order system. These are very different system types. As amended, Boyden cannot stand as a legitimate reference to deny the pending claims. In the absence of the Birnbaum reference, the arguments of the Examiner are respectfully fatally defective.

CONCLUSIONS

For the reasons set forth hereinabove, it is respectfully requested that the Examiner's rejection be removed and that the claims be allowed.

Respectfully submitted,

**HERTEN, BURSTEIN, SHERIDAN, CEVASCO,
BOTTINELLI LITT, TOSKOS & HARZ, LLC**

By: 

ARNOLD D. LITT, ESQ., Member
Registration No. 26,296



UNITED STATES PATENT AND TRADEMARK OFFICE

U.S. APPLICATION NO.: US 10/600,359

FILING DATE: JUNE 23, 2003

APPLICANTS: RICHARD H. DAVIDSON,
CRAIG D. HAGELIN and
JOSEPH F. WATKINS, JR.

TITLE: FLAVOR ORDERING SYSTEM

CERTIFICATION OF
RICHARD H. DAVIDSON
PURSUANT TO R. 131

The undersigned being of full age certifies to the following:

1. He is one of the inventors of the subject application and is familiar with the pending patent application, as well as the Examiner's Office Action June 2, 2006.

2. The undersigned understands that the filing date of the new art of record relied upon by the Examiner in rejecting the subject claims is January 13, 2003 (the Birnbaum reference, Serial No. 10/341,154).

3. As set forth in detail hereinafter, Applicant conceived of its invention well before the filing date of the Birnbaum reference, coupled with due diligence from prior to said date to a subsequent reduction to practice and the filing of the application. As such, under R.131, the Examiner is respectfully requested to withdraw Birnbaum as a reference.

4. On March 24, 2000 at 9:00 a.m., I attended a meeting at Hagelin Flavors located at 200 Meister Avenue, Branchburg, New Jersey, of the entire flavor division comprising about fifteen Hagelin employees, in order to discuss a new concept proposed by the undersigned and to provide a status update regarding the "architecture" of the flavor database to be used in the unique flavor ordering system set forth in the subsequently filed Application. The discussion revolved about a system for the distribution of available flavors offered to an operator of the system, such as a customer, comprising computer work stations linked to a central processing hub; where the central processing hub included means for providing information regarding flavors, including a flavor search system through which a desired flavor may be identified; and where the flavor search system is associated with the central processing hub.

5. In short, the concept of putting together an accessible flavors database on computer for the purpose of searching the database for available flavors was discussed.

6. Initially an "Excel"-based program was considered, but this was very rudimentary. However, conceptually, the searching of flavors by keyword by anyone in the Hagelin Company was discussed, as well as the necessity to develop computer program language in the context of an appropriate website; in short, a key word lexicon was discussed which would allow user input of keywords in order to facilitate the search of available flavors.

7. In November or December of ~~2000~~¹⁹⁹⁹ the undersigned and Craig Hagelin, a co-inventor, had numerous discussions regarding use of descriptors, as well as flavor "legal status" keywords. The grouping set forth in currently amended Claim 1 of the Application was discussed during this period of time.

8. On or about June 16, 2000 at 2:00 p.m., the undersigned discussed with D.C. Helms, web hosting and website development in connection with the flavor ordering system. D.C. Helms would act as a consultant to the inventors to extend the rudimentary "Excel"-based program to a custom program accessible by customers in the context of a website.

9. On or about September 15, 2000, there was another group meeting at Hagelin & Company, the Flavor Division, regarding a basic flavors tutorial and status update regarding the website and computer program development.

10. Between September 15, 2000 and September 21, 2001, the undersigned continued with his co-inventors to develop the database of flavors. A proposal was received from D.C. Helms dated September 21, 2001, a copy of which is attached hereto as Exhibit "A". Ultimately, a contract was entered on November 9, 2002 with D.C. Helms, a copy of which is attached hereto as Exhibit "B" for website hosting and website development. D.C. Helms, based upon the technological input provided by the undersigned and his co-inventors, was to design a website and computer based program to facilitate the ready use of the flavor ordering system. Evidence of payments of D.C. Helms invoices is attached hereto as Exhibit "C".

11. In accordance with the contract, D.C. Helms developed a website/program computer, based upon our input.

12. In approximately February 2002, I and my co-inventors performed a "beta" test in which a selected group of people were utilized as subjects in connection with the flavor ordering system and asked to evaluate same.

13. Following the "beta" test, we continued to develop the flavor ordering system and refined it into what is now known as the "Flavor Wizard".

14. In June of 2002, we hired the firm of Herten, Burstein, Sheridan, Cevasco, Bottinelli, Litt & Harz, LLC, to evaluate our invention and to begin drafting an application ultimately leading to a filing of an application with the United States Patent and Trademark Office. From June of 2002, and working closely with our attorneys; the firm of Welsh & Flaxman, which conducted prior art searches for us; as well as our patent draftsman, Robert Bush, various drafts of the patent application were generated, reviewed, revised and ultimately refined into a final form application which was filed in July, 2003.

15. Throughout this entire period of time we diligently continued to refine the invention, working very diligently with our co-inventors, and our professionals.

16. The flavor ordering system is now fully commercial and integrated into the Hagelin & Company operation modality.

17. We believe that the above facts in character and weight establish a conception date of the invention well prior to the effective date of the Bimbaum reference, coupled with due diligence from prior to said date to a subsequent filing of the Application and reduction to practice of the system.

18. All statements made are true and all statements made on information and belief are believed to be true. The undersigned is aware of the fact that willful false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the document and the registration. States

Date: 10.9.06


RICHARD H. DAVIDSON